

REMARKS

Claims 22-93 are pending in the Application and all have been rejected in the Office Action mailed November 26, 2008. Claim 67 has been cancelled and claims 40, 68, 69, and 79 have been amended. Claims 22, 40, 52, 68, and 79 are independent claims, from which claims 23-39, 41-51, 53-67, 69-78, and 80-93 depend, respectively. Applicants respectfully request reconsideration of claims 22-66 and 68-93, in light of the following remarks.

Amendments to the Claims

Applicants have amended independent claims 40, 68, and 79 as shown above to further clarify the subject matter of the claims. Support for these amendments may be found, for example, at pages 280-282 of the Application. Applicants have also amended dependent claim 69 to correct a minor claim drafting error. Applicants respectfully submit that these amendments do not add new matter.

Rejections of Claims

Claims 22-39 were rejected under 35 U.S.C. §112, first paragraph. Claims 40-51 and 68-93 were rejected under 35 U.S.C. §112, second paragraph. Claims 22-24, 29-42, 47-52, 57-69, 74-82, and 87-93 were rejected under 35 U.S.C. §102(e) as being anticipated by Kline et al. (US 6,157,653, hereinafter "Kline"). Claims 25-28, 43-46, 53-56, 70-73, and 83-86 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in view of Angle et al. (US 6,366,771, hereinafter "Angle"), and further in view of Trompower (US 6,132,306). Applicants respectfully traverse the rejections, for the reasons set forth during prosecution and in addition, those that follow.

Rejections Under 35 U.S.C. §112, First Paragraph

Claims 22-39 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Applicants respectfully traverse the rejection.

The Office asserts, in part, at page 3, that '...[t]here is no support found relating

to "the group identifier associated with the last digital voice data processed", or "detecting that the group identifier ...is different than the group identifier associated with the last digital voice data processed" as claimed. (emphasis and italics in original)
Applicants respectfully disagree.

The Application states, at page 280, lines 9-10, "Groups of voice data are defined by a group identifier contained in each voice packet received...." Thus, Applicants respectfully submit that the Specification of the Application teaches that there is a "group identifier" associated with the voice data of each group of voice data received. It necessarily follows that all received voice data has an associated "group identifier". Further, the Specification states, at page 280, lines 16-22 that "...[u]pon identifying the lack of speech for a predefined gap time of about one second, the conversion circuitry assigns a different (pseudo-random) group identifier to subsequent voice packets. Likewise, upon identifying another gap, the conversion circuitry assigns another group identifier to voice packets generated thereafter." Thus, the Specification teaches that the "group identifier" associated with voice data of voice packets changes when a lack of speech for a predefined time occurs.

The Office asserts, at page 3:

The only statement, which is related to the amendment, can be found at pages 280-282 is "Thus, for each group of data (each group of voice data extracted from voice packets having a common group identifier), the control processing circuit 5609 begins to wait the predetermined queuing time before beginning conversion. Thereafter, no queuing time is required until the next group of voice packets begin." (See page 281, first paragraph), which apparently addresses different scope or limitation as amended in claim 22.

(emphasis and italics in original)

Applicants respectfully submit that this statement shows that the Office recognizes that the cited portion of the Application does relate to the subject matter in question. Applicants also respectfully submit that the portion of the Specification

identified by the Office teaches that "...for each group of data (each group of voice data extracted from voice packets having a common group identifier), the control processing circuit 5609 begins to wait the predetermined time before beginning conversion." Applicants respectfully submit that one of ordinary skill in the relevant art at the time of the invention would immediately and unquestioningly recognize that the "control processing circuit 5609", in order to "begin[] to wait" before "beginning conversion [processing]" for "each group of data...having a common group identifier" would "detect[]" that the group identifier [for the voice data of a group] ... is different than the group identifier associated with the last digital voice data processed." Further, the portion of the Application cited by the Office also states that "...[t]hereafter, no queuing time is required until the next **group** of voice packets begin." (emphasis added) Once again, Applicants respectfully submit that one of ordinary skill in the relevant art at the time of the invention would immediately and unquestioningly recognize that a change in "group identifier" associated with the voice data from voice packets is detected, in order to know when "the next group of voice packets begin", so that the "control processing circuit 5609" may "begin[] to wait the predetermined queuing time before beginning conversion [processing of the voice data]...", as claimed. Clearly, pages 280-282 teach a sequence of voice packets each containing voice data having an associated "group identifier", and that in a sequence of packets, voice data associated with a given "group identifier" is converted [processed], and then when voice data associated with a new "group identifier" is encountered, the "control processing circuit 5609 waits for a predetermined time, and conversion [processing] of voice data for a new "group identifier" begins. Thus, the "group identifier" associated with the voice data converted [processed] before the wait that occurs after a change in the associated "group identifier" teaches the "group identifier associated with the last digital voice data processed".

Therefore, for at least the reasons set forth above, Applicants respectfully submit that the cited portion of the Application at pages 280-282 does, indeed, provide adequate support for Applicants' claimed subject matter "the group identifier associated with the last digital voice data processed", and "detecting that the group

identifier ...is different than the group identifier associated with the last digital voice data processed", as claimed. Accordingly, Applicants respectfully request that the rejection of claims 22-39 under 35 U.S.C. §112, first paragraph, be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §112, Second Paragraph

Claims 40-51 and 68-93 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse the rejection.

The Office action states, at page 4:

Claims 40, 68 and 79 recites [sic] the limitation "*a processor for processing (or monitoring) digital voice data to detect a lack of voice activity (or speech) for at least a predefined period of time*". According to page 280 of the Specification, the conversion circuitry monitors incoming voice streams for gaps in voice input. The incoming voice streams appear to be analog voice signals, not digital voice data. Thus, the voice activity and speech are pertinent to analog voice signals, not digital voice data.

(emphasis and italics in original)

The Applicants respectfully submit that although the cited portion of the Specification may not explicitly recite "...*processing (or monitoring) digital voice data...*", Applicants respectfully submit that one of ordinary skill in the art at the time of the invention would immediately and unquestioningly recognize, upon reading Applicants' disclosure, that "detect[ing] a lack of voice activity (or speech) for at least a predefined period of time" in accordance with Applicants' claims may be done using a voice signal in either analog or digital forms.

Notwithstanding the above, Applicants have amended claims 40, 68, and 79 as shown above to generically claim voice. Applicants respectfully submit that the amendments to claims 40, 68, and 79 are supported, for example, at pages 280-282 of the Specification.

The Office action also states, at page 4:

Claims 40, 68 and 79 further recites the limitation "the processor leaving the group identifier unchanged, otherwise", "refraining from assigning a different group identifier to the digital voice data, otherwise" and "refraining from changing the processing of digital voice data and the identifier, otherwise", respectively. There is no clear explanation in the Specification when or how these conditions will be met."

Applicants respectfully disagree. Applicants respectfully submit that one of ordinary skill in the relevant art would immediately and unquestioningly recognize, upon reading and appreciating Applicants' disclosure, for example at pages 280-282, that the "otherwise" is implicitly understood to mean, as in claim 40, "...if a lack of voice activity for at least the predefined period of time is not detected..."; as in claim 68, "...if a lack of voice for at least the predefined period of time is not detected..."; and as in claim 79, "...if a lack of speech for at least the predefined period of time is not detected." For example, the Specification states, at page 280, lines 16-22, "...[u]pon identifying the lack of speech for a predefined gap time of about one second, the conversion circuitry assigns a different (pseudo-random) group identifier to subsequent voice packets. Likewise, upon identifying another gap, the conversion circuitry assigns another group identifier to voice packets generated thereafter." Applicants respectfully submit that it would be clear to one of ordinary skill in the relevant art at the time of the invention, upon reading and appreciating Applicants' disclosure, that a different group identifier is assigned upon identifying a lack of speech for a predefined time gap following a period of voice activity (otherwise there would be no gap). That is, when it is determined that no speech activity has occurred for a predefined period of time, a different group identifier is to be assigned to the voice data subsequent to the gap (i.e., until yet another gap occurs). Note that, by definition, a gap may be defined as "3. A suspension of continuity; interval; hiatus...." See, e.g., The American Heritage Dictionary of the English Language, ©1979, Houghton Mifflin Company, page 542. Therefore, Applicants respectfully submit that, for at least the reasons set forth above, the claims are clear

and definite, that the Specification does provide a clear explanation of when the conditions of claims 40, 68, and 79 are met, and that claims 40, 68, and 79 as examined were in accordance with 35 U.S.C. §112, second paragraph.

Notwithstanding the above, Applicants have amended claims 40, 68, and 79 as shown above to make explicit what was implicit in the language of claims 40, 68 and 79 prior to amendment. Applicants respectfully submit that adding explicitly what was implicit in the claim does not change the scope of the claim, give rise to any estoppel, or raise any new issues that would necessitate a new search.

Therefore, based at least upon the above, Applicants respectfully submit that claims 40, 68, and 79 are in compliance with 35 U.S.C. §112, second paragraph, and respectfully request that the rejection of claims 40, 68, and 79, and claims 41-51, 69-78, and 80-93 that depend therefrom be reconsidered and withdrawn.

As previously noted, claim 67 has been cancelled, rendering any rejection of claim 67 moot.

Also as previously noted, claim 69 has been amended to remedy a minor claim drafting error noted by the Office. Claim 69 now depends from independent claim 68. Applicants respectfully submit that this amendment does not add new matter, and respectfully request that any rejection of claim 69 be reconsidered and withdrawn.

I. Kline Does Not Anticipate Claims 22-24, 29-42, 47-52, 57-69, 74-82, And 87-93

Claims 22-24, 29-42, 47-52, 57-69, 74-82, and 87-93 were rejected under 35 U.S.C. §102(e) as being anticipated by Kline. Applicants respectfully traverse the rejection.

With regard to the anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a **single** prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, "[t]he identical invention **must** be shown in **as complete detail**

as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (italics in original, emphasis added)

With regard to independent claim 22, Applicants respectfully submit that claim 22 recites, "[a] packet voice processing circuit comprising: an interface for receiving voice data packets via a packet network, each of the voice data packets comprising digital voice data and an associated group identifier; a queue for storing the digital voice data; a processor for detecting a change in the group identifier; and wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed, the processor continuing processing of queued digital voice data, otherwise." Applicants respectfully submit that Kline does not teach or suggest all of the features of Applicants' claim 22.

The Office asserts that Kline teaches "[a] packet voice processing circuit comprising: ... wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data **[Figs. 2-5; placing the packet in voice packet buffer (smoothing buffer) for a predetermined amount of time before being dequeued and playout; col. 2, lines 17-28, col. 6, lines 3 -10, line 58 - col. 7, line 2];** and the processor continuing processing of queued digital voice data, otherwise **[col. 2, line 17-28].**" (emphasis in original) See Office action at pages 5-6.

As an initial matter, Applicants respectfully submit that the Office has failed to address all of the features of Applicants' claim 22, and that claim 22 is allowable over Kline for at least this reason. Specifically, the rejection of claim 22 fails to address the portion of claim 22 that recites "...upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...." 37 C.F.R. §1.104(b) states, "The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the

action of the examiner may be limited to such matters before further action is made.” Applicants respectfully submit that the Office does not assert that any such matters exist that would be grounds for failing to show how and why the cited art teaches all aspects of Applicants’ claim 22. Therefore, Applicants respectfully submit that for at least this reason, the Office has failed to show where Kline teaches each and every element of Applicants’ claim 22, as required by M.P.E.P. §2131, that the Office has failed to establish a *prima facie* case of anticipation, and that claim 22 is allowable.

In addition, Applicants respectfully submit that the Office has failed to show how and why Kline teaches “...wherein the processor stops the processing of queued digital voice data for a predetermined amount of time...”, as claimed. Initially, Applicants respectfully submit that the Office cites Figs. 2-5, but fails to identify any element in Figs. 2-5, or provide any explanation of how and why anything in Figs. 2-5 of Kline teach this aspect of Applicants’ claim 22. Applicants have reviewed Figs. 2-5, and are unable to identify anything that teaches or suggests “...wherein the processor stops the processing of queued digital voice data for a predetermined amount of time...,” as asserted by the Office. Further, Applicants respectfully submit that there is nothing in Figs. 2-5 that teach or suggest Applicants’ feature “wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...,” as claimed. Applicants respectfully request that any future rejection, should one be asserted, be more specific and clear as to relevant portions of the teachings of the cited art, rather than merely identifying the entirety of four drawing figures, and include an explanation of what elements are alleged to teach Applicants’ claim features, and why. Therefore, Applicants respectfully submit that Figs. 2-5 of Kline do not teach or suggest at least Applicants’ feature “wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data

processed...”, as claimed.

The Office also identifies col. 2, lines 17-28 of Kline as teaching Applicants’ claim 22 feature “wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed....” The cited portion of Kline at col. 2, lines 17-28 is shown below in context and underlined:

Although the packets from a voice packet transmitter are generated at uniform intervals, spaced del_T time units apart, they do not arrive at the destination uniformly spaced due to different queuing delays that each individual packet encounters as it traverses the packet network. Since packets at the voice destination must be played out at uniform intervals, also spaced del_T time units apart, the variation in network queuing delay is compensated for by using a smoothing buffer at the voice packet receiver. When the initial (first) packet of a call arrives at the voice packet receiver, it is enqueued in the smoothing buffer and is not played out immediately. Instead, it is held in the smoothing buffer for a predetermined amount of time (referred to as the initial smoothing delay) before being dequeued and playout. After the first packet is played out, subsequent packets are played out at uniform time intervals (uniform spacing) of del_T time units. If the smoothing delay is chosen large enough, then the probability of a smoothing buffer underflow (i.e., a subsequent packet arrives too late to be played out) for subsequent packets is negligible.

The portion of Kline shown above teaches that packets at a voice destination must be played out at uniform intervals, and that variation in network queuing delay is compensated for using a smoothing buffer at the voice packet receiver. The cited portion of Kline does say that “...[w]hen the initial (first) packet of a call arrives at the voice packet receiver, it is enqueued in the smoothing buffer and is not played out immediately. Instead, it is held in the smoothing buffer for a predetermined amount of

time (referred to as the initial smoothing delay) before being dequeued and played out...” Kline also states that “[a]fter the first packet is played out, subsequent packets are played out at uniform time intervals (uniform spacing) of del_T time units.” The cited portion of Kline does not, however, teach or suggest that “...the processor stops the processing of queued digital voice data for a predetermined amount of time...” Indeed, Kline is quite clear that the initial packet of a call is enqueued and played out after a delay. Applicants respectfully submit that enqueueing an initial packet of a call and delaying its payout is different from and does not teach or suggest ‘...stop[ping] the processing of queued digital voice data for a predetermined amount of time...,’ as claimed. This is so because Kline fails to teach or suggest that there is processing of queued digital voice data at the time the initial packet of a call is received and enqueued. Further, even if Applicants were to agree (which Applicants do not) that Kline teaches processing before the initial packet is enqueued, Kline still does not teach or suggest that processing of queued digital voice data is stopped “...upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...,” as claimed. Therefore, Applicants respectfully submit that the cited portion of Kline at col. 2, lines 17-28 fails to teach or suggest at least this aspect of Applicants’ claim 22.

In addition, the Office cites Kline at col. 6, lines 3-10 as teaching Applicants’ claim 22 feature “wherein the processor stops the processing of queued digital voice data for a predetermined amount of time upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...” The cited portion of Kline at col. 6, lines 3-10 is shown below in context and underlined:

A portion of buffer 208 is set aside as a voice packet receive buffer for the voice packet processor 212. Payout is accomplished by placing the packets in the voice packet buffer (enqueueing) and, at a later time, retrieving the packets from the voice packet buffer (dequeuing) before converting packet to original voice signal and playing out the voice signal to the voice destination device 110. The voice packet buffer is referred to as the smoothing buffer.

Although the cited portion of Kline teaches that a portion of a “buffer 208” is set aside as a “receive buffer”, and that packets placed in the “receive buffer” are retrieved at a later time for playout, this cited portion of Kline does not teach or suggest “...wherein the processor stops the processing of queued digital voice data for a predetermined amount of time...,” as asserted by the Office. Further, this portion of Kline also does not teach or suggest that processing of queued digital voice data is stopped “...upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...,” as claimed. Therefore, Applicants respectfully submit that the cited portion of Kline at col. 6, lines 3-10 also fails to teach or suggest at least this aspect of Applicants’ claim 22.

Finally, Applicants address the cited portion of Kline at col. 6, line 58 to col. 7, line 2, which is shown below:

FIG. 5 shows a flowchart of the adaptive smoothing delay process 500. Each time a voice packet playout occurs (step 502), the sequence number 306 of the voice packet is checked (step 505). If the sequence number is not valid, the packet is discarded (step 510), and the next packet (if there is one) is examined (step 502). If the sequence number is valid, the packet is playout and the waiting time of the packet is computed (step 515), where the waiting time is defined as the difference between the time instance that the packet was enqueued into the smoothing buffer and the time that the packet was dequeue from the smoothing buffer. A histogram of waiting times is then updated (step 520).

The portion of Kline shown above merely explains that a sequence number of each packet to be played out is checked, and if not valid, the packet is discarded and the next packet is examined. If the sequence number of a packet to be played out is valid, the packet is played out, and a waiting time is computed. There is nothing in this portion of Kline, however, that teaches teach or suggest “...wherein the processor stops the processing of queued digital voice data for a predetermined amount of time...,” as

asserted by the Office. Moreover, this portion of Kline does not teach or suggest that processing of queued digital voice data is stopped "...upon detecting that the group identifier associated with the queued digital voice data is different than the group identifier associated with the last digital voice data processed...", as claimed. Therefore, Applicants respectfully submit that the cited portion of Kline at col. 6, line 58 to col. 7, line 2 fails to teach or suggest at least this aspect of Applicants' claim 22.

Applicants respectfully submit that claim 22 is allowable over Kline for additional reasons. Kline clearly states that "...packets at the voice destination **must** be played out at uniform intervals...." See *id.* at col. 2, lines 14-16. Applicants respectfully submit that Kline **teaches away** from "...the processor stop[ping] the processing of queued digital voice data for a predetermined amount of time..., as recited by Applicants' claim 22. Applicants respectfully submit that stopping the processing of queued digital voice data in Kline as required by Applicants' claim 22 would result in gaps in the playout of Kline, which Kline seeks to avoid.

The failure of Kline to teach Applicants' claim 22 is even more clear, in light of the suggestion by the Office that the "group identifier" of Applicants' claim 22 is taught by Kline's "sequence number". See Office action at page 6. The Office asserts that "...Kline teaches ... a processor for detecting a change in the group identifier [Fig. 5, step 505; the changing of sequence number of each voice packet is checked (a different sequence number is assigned to each voice packet); col. 6, lines 23 -39];...." See Office action at page 6. Kline states that "...[e]ach successive voice packet is assigned a successive sequence number 306." See *id.* at col. 4, line 59-60. Applicants respectfully submit that if the suggested correspondence were true, then Kline would stop processing queued voice data for a predetermined amount of time for each packet, since the "sequence number", which the Office identifies as teaching Applicants' "group identifier" changes for each packet. The Applicants respectfully submit that the Office has not shown where Kline advocates stopping the processing of queued digital voice data, in accordance with Applicants' claim 22. Therefore, Applicants respectfully submit that claim 22 is allowable over Kline for at least these additional reasons.

Based at least upon the above, Applicants respectfully submit that Kline fails to teach or suggest each and every element of Applicants' claim 22, as required by M.P.E.P. §2131, that a *prima facie* case of anticipation has not been established, and that claim 22 is allowable over Kline. In addition, Applicants respectfully submit that claims 23-39 that depend from allowable claim 22 are also allowable over Kline, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 22-24 and 29-39 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 40, Applicants respectfully submit that claim 40 has been amended to recite, "[a] packet voice processing circuit comprising: a processor for processing voice to detect a lack of voice activity for at least a predefined period of time; an interface for transmitting voice data packets via a packet network, each of the voice data packets comprising digital voice data and an associated group identifier; the processor changing the group identifier if a lack of voice activity for at least the predefined period of time is detected; and the processor leaving the group identifier unchanged, if a lack of voice activity for at least the predefined period of time is not detected." Applicants respectfully submit that the Office has not shown that Kline teaches each and every element of Applicants' amended claim 40, as required by M.P.E.P. §2131, and therefore has not established a *prima facie* case of anticipation with respect to claim 40.

The Office states, at page 8, that Kline teaches "...a processor for processing incoming voice streams to detect a lack of voice activity for at least a predefined period of time [**Figs. 2-4; It is inherent in Kline that Voice Packet Processor determines a talkspurt based on a predefined period of time in order to send packets uniformly space by del_T units of time during a talkspurt; col. 5, lines 17-23**];..." (emphasis in original) Applicants respectfully disagree, and note that the Office cites Kline only at Figs. 2-4 and col. 5, lines 17-23 as teaching this aspect of Applicants' claim 40.

Initially, Applicants respectfully submit that the Office cites Figs. 2-4 of Kline, but fails to identify any specific teaching therein, or provide any explanation of how and why

Figs. 2-4 teach the details of Applicants' claimed feature. Applicants have been unable to find where Figs. 2-4 teach Applicants' feature "...a processor for processing voice to detect a lack of voice activity for at least a predefined period of time...." Therefore, Applicants respectfully submit that the Office has not shown how and why Figs. 2-4 of Kline provide any support in the establishment of a *prima facie* case of anticipation, as required by M.P.E.P. §2131.

Applicants now address the cited portion of Kline at col. 5, lines 17-23, shown below underlined in context:

The dual purpose of the sequence number is true when the voice packet processor includes a voice activity detection mechanism. In this case, the PVT detects the presence or absence of voice (so called talkspurts), and only sends packets when it detects the presence of active speech signals in the audio channel. Thus, the PVT will send packets uniformly space by del_T units of time during a talk spurt, but will not send packets during silence intervals. However, the PVT keeps incrementing the sequence number at the same del_T time increments even during silence intervals when no packets are sent. Thus, when the next talkspurt occurs, the transmitted packets will contain sequence numbers that correspond to the expected relative playout times at the PVR. Thus, the PVR can continue to use the sequence number in the voice packets as a time stamp and a sequence number.

(emphasis added)

Applicants respectfully note that the cited portion of Kline shown above fails to make any mention of "detect[ing] a lack of voice activity for at least a predefined period of time", as claimed. Further, the Office fails to explain how and why the cited portion teaches at least this aspect of Applicants' claim 40, and offers only the conclusory statement "It is inherent in Kline that Voice Packet Processor determines a talkspurt based on a predefined period of time in order to send packets uniformly space by del_T units of time during a talkspurt." (emphasis added) Applicants respectfully disagree with this assertion, in that it is not inherent that the cited portion of Kline teaches Applicants' claimed feature. Further, Applicants respectfully submit that the Office has not met the

requirements to support an assertion of inherency.

According to MPEP §2112, Sec. IV, page 2100-54,55, “[t]o establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient**.’” (emphasis added) ‘In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.’ Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).” MPEP 2112 (emphasis in original).

Thus, a simple conclusory statement that “it is inherent...”, such as that offered by the Office, is not sufficient. The cited portion of Kline fails to teach or suggest Applicants’ feature “detect[ing] a lack of voice activity for at least a predefined period of time”, and the Office has offered no explanation of why it would necessarily be so, as required by the M.P.E.P.. Therefore, the cited portion of Kline at col. 5, line 17-23 also does not support a *prima facie* case of anticipation. Because the Office cites Kline only at Figs. 2-4 and col. 5, lines 17-23, which Applicants have shown above do not offer the necessary support, Applicants respectfully submit that Kline fails to teach or suggest at least Applicants’ feature “...a processor for processing voice to detect a lack of voice activity for at least a predefined period of time...,” as claimed, and therefore that Kline does not anticipate Applicants’ claim 40.

Applicants respectfully submit that there are additional reasons why Kline does not teach or suggest Applicants’ claim 40. For example, Kline does not teach, at least, “...an associated group identifier; the processor changing the group identifier if a lack of voice activity for at least the predefined period of time is detected; and the processor leaving the group identifier unchanged, if a lack of voice activity for at least the predefined period of time is not detected,” as claimed. The Office asserts that the “sequence number” of Kline teaches Applicants’ “group identifier”, “...an associated

group identifier [**Figs. 2 -3; Voice Packet Processor 212 assigns a sequence number for a voice packet ; col. 4, lines 57-60**];....” (emphasis in original) See Office action at pages 8-9.

Applicants respectfully submit that immediately following the portion of Kline cited by the Office, at col. 5, lines 25-28, Kline teaches that “...[t]he PVT keeps incrementing the sequence number at the same del_T time increments even during silence intervals when no packets are sent.” Applicants therefore respectfully submit that Kline cannot teach “...the processor changing the group identifier if a lack of voice activity for at least the predefined period of time is detected; and the processor leaving the group identifier unchanged, if a lack of voice activity for at least the predefined period of time is not detected.” Kline simply does not leave the “sequence number” unchanged, but instead changes it every “del_T” time units.

This argument was previously presented by the Applicants. See Response filed October 8, 2008. The Office failed to respond to the prior traversal by the Applicant in the instant Office action, **contrary to M.P.E.P. §707.07(f)**, which states, in part:

In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.

Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.

(emphasis added)

Kline teaches that the “sequence number” is incremented whether or not there is voice activity, which is patentably distinct from “...leaving the group identifier **unchanged**, if a lack of voice activity for at least the predefined period of time is not detected,” as claimed. Applicants specifically request that the Office explain how and

why this disparity in the teachings of Kline at col. 5, lines 17-32 can be reconciled with the language of Applicants' claim 40. Further, the assertion by the Office that "...[i.e., **continuing to receive incoming voice streams without silence, no sequence number is assigned until a sufficient number of sample have been accumulate; col. 4, lines 61-67**]" has no relevance to Applicants' claim feature, in that the claim does not recite "assignment", but rather clearly states that the "group identifier" (which has been identified by the Office as being taught by the "sequence number" of Kline) **is left unchanged**, "...if a lack of voice activity for at least the predefined period of time is not detected." "Assignment" of any sort is not a factor. Further, the cited portion of Kline at col. 4, lines 61-67 does not remedy this deficiency of Kline. To summarize, Applicants' claim requires that the "group identifier" remain the same in the presence of voice activity, something not taught by Kline. Therefore, Applicants respectfully submit that claim 40 is allowable over Kline for at least this additional reason.

Based at least upon the above, Applicants respectfully submit that Kline fails to teach or suggest each and every element of Applicants' claim 40, as required by M.P.E.P. §2131, that the Office has failed to establish a *prima facie* case of anticipation, and that claim 40, and any claims that depend therefrom, are allowable over Kline. Accordingly, Applicants respectfully request that the rejection of claims 40, 41, and 47-52 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 52, Applicants respectfully submit that the Office rejects claim 52 for many of the same reasons as claim 22, relying on the same support from many of the same portions of Kline addressed above with respect to claim 22. Therefore, Applicants respectfully submit that claim 52, and any claims that depend therefrom, are also allowable over Kline, for at least some of the reasons set forth above with respect to claim 22. Accordingly, Applicants respectfully request that the rejection of claims 52 and 57-66 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 68, Applicants respectfully submit that the Office rejects claim 68 for many of the same reasons asserted in the rejection of claim 40, relying on support from many of the same portions of Kline addressed above with respect to claim 40. Therefore, Applicants respectfully submit that claim 68, and any claims that depend therefrom, are also allowable over Kline, for at least some of the reasons set forth above with respect to claim 40. Accordingly, Applicants respectfully request that the rejection of claims 68, 69, and 74-78 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 79, Applicants respectfully submit that the Office rejects claim 79 for many of the same reasons asserted in the rejection of claims 40 and 68 relying on support from many of the same portions of Kline addressed above with respect to claims 40 and 68. Therefore, Applicants respectfully submit that claim 79, and any claims that depend therefrom, are also allowable over Kline, for at least some of the reasons set forth above with respect to claim 40. Accordingly, Applicants respectfully request that the rejection of claims 79-82 and 87-93 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to dependent claims 31 and 59, Applicants respectfully submit that claims 31 and 59 are rejected for exactly the same reasons, citing exactly the same portions of Kline set forth in the rejections of claims 31 and 59 in the Office action mailed July 3, 2008. Applicants traversed the rejections of claims 31, 34-38, 59, and 62-66 of the Office action of July 3, 2008 in the response filed October 8, 2008. See Applicants' response filed October 8, 2008 at page 14. Applicants respectfully note that the instant Office action repeat the rejections in spite of failing to respond to Applicants' arguments traversing those rejections, contrary to M.P.E.P. §707.07(f). Applicants maintain that claims 31 and 59 are allowable over Kline for at least the reasons set forth

in Applicants' response of October 8, 2008. **Applicants respectfully request that the Office not ignore Applicants' traversal, and fully address Applicants' arguments as set forth in the response of October 8, 2008, as required by M.P.E.P. §707.07(f).**

With regard to dependent claims 32-37 and 60-65, Applicants respectfully submit that claims 32-37 and 60-65 are rejected for exactly the same reasons, citing exactly the same portions of Kline set forth in the rejections of claims 32-37 and 60-65 in the Office action mailed July 3, 2008. Applicants traversed the rejections of claims 34-38 and 62-66 of the Office action of July 3, 2008 in the response filed October 8, 2008. See Applicants' response filed October 8, 2008 at pages 14-21. Again, Applicants respectfully note that the instant Office action repeats the rejection, and fails to respond to Applicants' arguments traversing those rejections, **contrary to M.P.E.P. §707.07(f)**. Applicants maintain that claims 34-38 and 62-66 are allowable over Kline for at least the reasons set forth in Applicants' response of October 8, 2008. **Applicants again respectfully request that the Office not ignore Applicants' traversal, and fully address Applicants' arguments as set forth in the response filed October 8, 2008, as required by M.P.E.P. §707.07(f).**

With regard to dependent claims 29, 30, 47, 48, 57, 58, 74, 75, 89, and 90, Applicants respectfully traverse the assertion of Official Notice. Regarding claims 29, 30, 47, 48, 57, 58, 74, 75, 89, and 90, the Office action states "Examiner takes Office [sic] Notice of fact without documentary evidence that the packet network uses a transmission control protocol (TCP)/Internet protocol (IP)." See Office action at page 7. As an initial matter, Applicants respectfully submit that the rejection fails to identify all of the aspects of claims 29, 30, 47, 48, 57, 58, 74, 75, 89, and 90 for which the Office is asserting Official Notice. Notwithstanding, Applicants respectfully challenge the conclusory assertions made in the Office action without any supporting evidence that the elements recited in claims 29, 30, 47, 48, 57, 58, 74, 75, 89, and 90 may be well known or obvious in the art. Applicants respectfully submit that the elements recited in

claims 29, 30, 47, 48, 57, 58, 74, 75, 89, and 90 are not well known or obvious in their respective contexts. Applicants respectfully submit that, for example, in the context of the elements as recited in independent claim 22, the elements in dependent claim 29 and 30 are not well known or obvious. M.P.E.P. § 2144.03(E) states that “[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.” Accordingly, in order to maintain the rejection, Applicants respectfully request that the Examiner produce references in support of the Examiner’s contention or, if the Examiner is relying upon personal knowledge to support the finding of what is known in the art, then the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding. See, e.g., M.P.E.P. § 2144.03 and 37 C.F.R. § 1.104(d)(2).

With regard to dependent claims 38, 50, 66, 77, and 92, Applicants have previously shown that the assertion by the Office that the “sequence number” of Kline (which the Office has identified as teaching Applicants’ “group identifier”) teaches Applicants claims 38, 50, 66, 77, and 92, which recite “...wherein the group identifier is a pseudo-random number...”, makes no technical sense. See Response filed October 8, 2008 at pages 19-21) **The instant Office action has failed to set forth any response to Applicants’ prior arguments with respect to this repeated rejection, contrary to M.P.E.P. §707.07(f)**. Again, the instant Office fails to provide any explanation or reasoning of how a “sequence number”, which Kline teaches at col. 5, lines 25-28, “...keeps incrementing ... at the same del_T time increments even during silence intervals...” and which Kline teaches, at col. 5, lines 7-8, “...represents a change in time of del T units...” can teach a “pseudo-random number”. Applicants respectfully request that the Office specifically explain how this fundamental difference in the nature of a number that is incremented on a regular basis teaches a “pseudo random number” in accordance with Applicants’ claims 38, 50, 66, 77, and 92. For example, Applicants request that the Office explain how a “pseudo-random number” would be used to

“represent a change in time”, as Kline describes. Applicants respectfully submit that the support provided by the Office for this rejection in the instant Office action, and in prior Office actions, is insufficient to establish a *prima facie* case of anticipation, and that claims 38, 50, 66, 77, and 92 are independently allowable over Kline for at least these reasons.

With regard to dependent claims 49, 76, and 81, Applicants respectfully submit that the Office asserts that Kline teaches “...the minimum period of time of a lack of voice activity is approximately one second [Fig. 5; Identifying a silence gap in the speech or if a predetermined time, typically in minutes , has elapsed ; col. 7, lines 9-64]. (emphasis in original) See Office action at page 9. Applicants respectfully submit that whether or not Kline teaches “...the minimum period of time of a lack of voice activity is approximately one second...” is not material to a rejection of claims 49, 76, and 81, in that claims 49, 76, and 81 do not recite that language. Further, the Office has failed to provide any explanation or interpretation of how and why the cited portion of Kline at col. 7, lines 9-64, which is asserted to teach “...a predetermined time, typically in minutes...”, teaches Applicants feature “...wherein the predefined period of time is approximately 1 (one) second.” Applicants respectfully submit that the teaching of period of time “...typically in minutes...” is not a period of time during which there is a lack of voice activity. Instead, Kline teaches that this period of time “typically in minutes” is the length of the time interval between those times when “...the longest smoothed waiting time is compared with the maximum expected waiting time...”, as stated at col. 7, lines 10-13. Even if Applicants were to agree that the “...typically in minutes...” teaching of Kline related to a “predetermined time” during which there is a “...lack of voice activity...”, which Applicants do not, the Office has not shown how a time interval of at least two minutes (i.e., “typically in minutes (plural)”) teaches a time interval of “...approximately one second....” Kline fails to teach that the cited time interval of Kline can be as short as “...approximately 1 (one) second,” as claimed. Thus, Applicants respectfully submit that Kline fails to teach or suggest at least Applicants’

claims 49, 76, and 81, and that claims 49, 76, and 81 are independently allowable over Kline for at least these reasons.

II. The Proposed Combination Of Kline, Angle, And Trompower Does Not Render Claims 25-28, 43-46, 53-56, 70-73, And 83-86 Unpatentable

Applicants respectfully submit that claims 25-28, 43-46, 53-56, 70-73, and 83-86 depend respectively, from independent claims 22, 40, 52, 68, and 79. Applicants believe that claims 22, 40, 52, 68, and 79 are allowable over the proposed combination of references, in that the Office has not asserted that Angle and/or Trompower remedy the shortcomings of Kline, set forth above. Because claims 22, 40, 52, 68, and 79 are allowable over the proposed combination of Kline, Angle, and Trompower, Applicants respectfully submit that claims 25-28, 43-46, 53-56, 70-73, and 83-86, that depend therefrom, are allowable as well, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 25-28, 43-46, 53-56, 70-73, and 83-86 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Conclusion

The Office Action makes various statements regarding claims and the cited references that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants believe that all of claims 22-66 and 68-93 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to contact the undersigned at (312) 775-8000 for an interview.

An early Office Action on the merits and allowance of claims 22-66 and 68-93 is respectfully requested.

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The Commissioner is hereby authorized to charge any fees required by this submission to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Dated: March 26, 2009
McAndrews, Held & Malloy, Ltd.
500 West Madison Street
34th Floor
Chicago, Illinois 60661
(312) 775-8000

By /Kevin E. Borg/
Kevin E. Borg
Reg. No. 51,486